

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYTHORN JACHIN WINKELMAN,

Defendant and Appellant.

C062518

(Super. Ct. No. 08F8507)

Defendant Raythorn Jachin Winkelman entered a plea of no contest to theft from an elder person (Pen. Code, § 368, subd. (d); count 1) and forgery (Pen. Code, § 470, subd. (a); count 3) and admitted a prior prison term allegation (Pen. Code, § 667.5, subd. (b)) in exchange for dismissal of the remaining counts and a stipulated state prison sentence of three years eight months. The court sentenced defendant accordingly and imposed various fees, fines, and assessments, including a

\$30 criminal conviction assessment as to each count pursuant to Government Code section 70373.

Defendant appeals, contending that the trial court erred in imposing the criminal conviction assessment because his offenses occurred in 2008, prior to the effective date of Government Code section 70373, and thus constitutes an unauthorized retroactive application of a statute in violation of Penal Code section 3.¹ We will affirm the judgment.

DISCUSSION

Government Code section 70373 became effective on January 1, 2009.² (Stats. 2008, ch. 311, § 6.5.) Penal Code

¹ Defendant does not dispute the holding in *People v. Brooks* (2009) 175 Cal.App.4th.Supp. 1 (*Brooks*) that Government Code section 70373 does not violate ex post facto principles.

² Government Code section 70373 provides:

"(a)(1) To ensure and maintain adequate funding for court facilities, an assessment shall be imposed on every conviction for a criminal offense, including a traffic offense, except parking offenses as defined in subdivision (i) of Section 1463 of the Penal Code, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. The assessment shall be imposed in the amount of thirty dollars (\$30) for each misdemeanor or felony and in the amount of thirty-five dollars (\$35) for each infraction.

"(2) For the purposes of this section, 'conviction' includes the dismissal of a traffic violation on the condition that the defendant attend a court-ordered traffic violator school, as authorized by Sections 41501 and 42005 of the Vehicle Code. This assessment shall be deposited in accordance with

section 3 provides: "No part of [the Penal Code] is retroactive, unless expressly so declared." Penal Code section 3 "simply embodies the general rule of construction, coming to us from the common law, that when there is nothing to indicate a contrary intent in a statute it will be presumed that the Legislature intended the statute to operate prospectively and not retroactively." (*In re Estrada* (1965) 63 Cal.2d 740, 746 (*Estrada*); see *People v. Daniels* (1963) 222 Cal.App.2d 99,

subdivision (d), and may not be included with the fee calculated and distributed pursuant to Section 42007 of the Vehicle Code.

"(b) This assessment shall be in addition to the state penalty assessed pursuant to Section 1464 of the Penal Code and may not be included in the base fine to calculate the state penalty assessment as specified in subdivision (a) of Section 1464 of the Penal Code. The penalties authorized by Chapter 12 (commencing with Section 76000), and the state surcharge authorized by Section 1465.7 of the Penal Code, do not apply to this assessment.

"(c) When bail is deposited for an offense to which this section applies, and for which a court appearance is not necessary, the person making the deposit also shall deposit a sufficient amount to include the assessment prescribed by this section.

"(d) Notwithstanding any other law, the assessments collected pursuant to subdivision (a) shall all be deposited in a special account in the county treasury and transmitted therefrom monthly to the Controller for deposit in the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, established in Section 70371.5.

"(e) The Judicial Council shall provide for the administration of this section."

101 [rule of construction applies to statutes, particularly penal statutes].) "[Penal Code] section 3 is not intended to be a 'straitjacket.'" (*People v. Alford* (2007) 42 Cal.4th 749, 753 (*Alford*).) Other factors "may give a clue to the legislative intent." (*Estrada, supra*, at p. 746.) Penal Code section 3 applies "only after, considering all pertinent factors, it is determined that it is impossible to ascertain the legislative intent." (*Estrada*, at p. 746.) To "ascertain whether there is a clear and compelling implication that the Legislature so intended," we may use "[v]arious extrinsic aids, including the history of the statute, committee reports and staff bill reports" (*In re Chavez* (2004) 114 Cal.App.4th 989, 994.)

Defendant has failed to provide to this court a record to review. He simply argues that Penal Code section 3 applies since Government Code section 70373 does not expressly state it is retroactive. Although he recognizes that a new statute operates prospectively unless there is "a clear indication that the electorate, or the Legislature, intended otherwise," he fails to provide any extrinsic sources so that legislative intent may be ascertained. We are not required to do so for him. Absent an adequate record for meaningful review, the issue is waived and we must affirm. (*People v. Gordon* (1990) 50 Cal.3d 1223, 1250, overruled on another point in *People v. Hamilton* (2009) 45 Cal.4th 863, 926; *Maria P. v. Riles* (1987)

43 Cal.3d 1281, 1295-1296; *People v. Atkins* (2005)
128 Cal.App.4th 1376, 1385.)

DISPOSITION

The judgment is affirmed.

CANTIL-SAKAUYE, J.

I concur:

SIMS, Acting P. J.

I concur in the result:

RAYE, J.